

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

GREGORY R. ZAPUTIL, a married man )	NO. 64019-4-I
as his separate estate; and RUDOLPH )	
ZAPUTIL and GREGORY R. ZAPUTIL, )	DIVISION ONE
as Co-Trustees of the RUDOLPH )	
ZAPUTIL LIVING TRUST U/A DATED )	
JUNE 12, 2006, )	
)	
Appellants, )	
)	
v. )	UNPUBLISHED OPINION
)	
51st AVENUE, L.L.C., a Washington )	FILED: April 5, 2010
limited liability company, )	
)	
Respondent. )	
)	

Lau, J. — This is a boundary dispute between the Rudolph Zaputil Living Trust and 51st Avenue LLC. The essence of the dispute is which of two monuments should be used to locate their respective properties on the ground. Because the trial court correctly determined that the east monument marks the quarter corner, we affirm its order granting summary judgment to 51st Avenue LLC.

**FACTS**

In 1978, Gregory and Rudolph Zaputil purchased tract 6 and the south 59 feet of

tract 5 of Young's Half Acre Tracts "according to the plat recorded in Volume 16 of plats, page 37, in King County, Washington."<sup>1</sup> Young's Half Acre Tracts was platted in 1907 as a subdivision of one of the tracts in Seattle Land Company's 5 Acre Tracts, which was platted in 1890. The plat map for Young's Half Acre Tracts shows the location of tracts 5 and 6 relative to a point labeled "1/4 Cor." This point is the west "quarter corner" of section 23, township 23 north, range 4 east, of the Willamette Meridian.<sup>2</sup>

In 1998, 51st Avenue purchased property immediately to the west of the Zaputils' property. By this point, tracts 7 and 8 of Young's Half Acre Tracts had been short platted to create lots 1, 2, and 3. 51st Avenue's deeds describe its property as

LOT 2 OF CITY OF TUKWILA SHORT PLAT NO. 78-34-SS RECORDED  
UNDER RECORDING NO. 7901250881, RECORDS OF KING COUNTY,  
WASHINGTON

and

LOT 3 OF CITY OF TUKWILA SHORT PLAT NO. MF 78-34-SS, ACCORDING  
TO PLAT RECORDED JANUARY 25, 1979 UNDER RECORDING NO.  
7901250881, IN KING COUNTY, WASHINGTON.

The short plat map shows the location of lots 2 and 3 relative to a point labeled "W 1/4

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<sup>1</sup> Parts of tracts 5 and 6, which had previously been condemned for 52nd Avenue South, were specifically excluded from the conveyance.

<sup>2</sup> In the government land survey system, a section is, at least theoretically, a perfect square, one mile on each side. The corners of the square are known as section corners. The section, in turn, contains four quarters and the point halfway between the section corners is known as a quarter corner. Each section corner and quarter corner is marked with a physical object on the ground known as a monument. It is in reference to these monuments that land is located on the earth. See 18 William B. Stoebuck & John W. Weaver, Washington Practice: Real Estate: Transactions § 13.2, at 75–76. (2d ed. 2004).

Corner Sec 23 T23 N R4E, WM.” In addition to lots 2 and 3, 51st Avenue also acquired tract 10 and the south 22 feet of tract 9 of Young’s Half Acre Tracts “ACCORDING TO PLAT THEREOF RECORDED IN VOLUME 16 OF PLATS AT PAGE(S) 37, IN KING COUNTY, WASHINGTON.” Thus, the location of 51st Avenue’s properties, like the Zaputil property, is described relative to the west quarter corner of section 23.

Soon after purchasing its properties, 51st Avenue filed a lot consolidation with the City of Tukwila. Based on a professional land survey, it submitted a metes and bounds legal description for its combined properties commencing at a point the surveyor took to be the west quarter corner. King County surveyors had placed a monument in that location in 1964 to mark the quarter corner. At the time, the surveyors noted the existence of another monument 10 feet to the west, which they labeled a “reference monument.” We refer to the 1964 monument as the “east monument” and the preexisting monument as the “west monument.”

On November 26, 2008, the Zaputils, as cotrustees of the Rudolph Zaputil Living Trust filed suit against 51st Avenue to establish the boundary between their properties. They claimed the boundary had become uncertain and requested that the superior court use its equitable powers to fix the boundary pursuant to chapter 58.04 RCW.<sup>3</sup> In

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<sup>3</sup> “The purpose of this chapter is to provide alternative procedures for fixing boundary points or lines when they cannot be determined from the existing public record and landmarks or are otherwise in dispute.” RCW 58.04.001. When the affected landowners cannot resolve the dispute by agreement, any one of them may file suit as provided in RCW 58.04.020. RCW 58.04.007. Under this section, any of the affected landowners may bring “a civil action in equity” in superior court whenever a boundary has been “lost, or by time, accident or any other cause [has] become

particular, the Zaputils argued the lot consolidation survey and resulting metes and bounds legal description incorrectly used the east monument to mark the quarter corner instead of the west monument.

51st Avenue filed a motion for summary judgment dismissal. It presented evidence that the east monument reestablished the original monument from the original survey and that the nearby west monument was not the original monument. It pointed to a King County surveyor's 1924 field notes, which indicated the original monument had been buried under eight feet of fill and that the surveyor set a concrete hub at "Approx. 1/4 S. Cor 22/23." It also noted that in 1942, a King County field crew that was reestablishing the centerline of 53rd Avenue South, expressed doubt as to whether the west monument marked the quarter corner. "This [center line] does not fit fences or roads – do not believe 1/4 cor to be original used for Plat." It showed that the 1964 surveying crew established the east monument as the quarter corner based on its analysis of prior field notes and that it labeled the west monument a "reference monument." According to 51st Avenue's expert, past King County surveyors commonly set reference monuments in the vicinity of quarter or section corners to assist in reestablishing the true monument in case it was disturbed by construction. Finally, 51st Avenue emphasized that numerous surveys since 1964 used the east monument as the quarter corner and that its location matched the distances recorded in the

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obscure, or uncertain." RCW 58.04.020. The court may order the lost or uncertain boundary to be established and marked on the ground. To assist in this determination, the court may in its discretion appoint commissioners to survey the area. RCW 58.04.030.

original plat maps.

The Zaputils responded that other surveys used the west monument as the quarter corner, including the survey used to condemn parts of lots 5 and 6 to create 52nd Avenue South in the early 1960s. They argued it would be unfair to allow their boundary with 51st Avenue to be defined in relation to the east monument when 52nd Avenue South was laid out based on the west monument because the result would be a 10 foot narrowing of their property.

The superior court granted 51st Avenue summary judgment, concluding that the boundary was not uncertain because there was no genuine dispute that the 1964 monument marked the government established quarter corner.<sup>4</sup> The Zaputils appeal.

#### STANDARD OF REVIEW

This court reviews an order of summary judgment de novo, engaging in the same inquiry as the trial court. Harberd v. City of Kettle Falls, 120 Wn. App. 481, 498, 507, 84 P.3d 1241 (2004). Summary judgment is appropriate if there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Citizens for Responsible Wildlife Mgmt. v. State, 149 Wn.2d 622, 630, 71 P.3d 644 (2003). The court construes facts and reasonable inferences from those facts in the light most favorable to the nonmoving party. Lipscomb v. Farmers Ins. Co. of Wash., 142 Wn. App. 20, 27, 174 P.3d 1182 (2007). But the nonmoving party must put forward

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<sup>4</sup> During oral argument, the court stated that it would not consider 51st Avenue's laches argument because it was not timely raised. And 51st Avenue did not specifically raise other boundary adjustment doctrines, such as adverse possession or mutual recognition and acquiescence.

specific facts that show there is a genuine issue for trial. See White v. State, 131 Wn.2d 1, 9, 929 P.2d 396 (1997). Argumentative assertions and unsupported conclusory allegations will not defeat summary judgment. Vacova Co. v. Farrell, 62 Wn. App. 386, 395, 814 P.2d 255 (1991). And summary judgment is appropriate if reasonable persons could reach only one conclusion. Venwest Yachts, Inc. v. Schweickert, 142 Wn. App. 886, 893, 176 P.3d 577 (2008).

### ANALYSIS

The Zaputills contend the 1998 metes and bounds legal description made their boundary with 51st Avenue uncertain. They complain that “a party cannot be allowed to simply substitute a metes and bounds description for a lot and block description created in a recorded plat [and] then claim that the metes and bounds description is superior.” Appellant’s Br. at 12. But 51st Avenue does not claim the metes and bounds description is “superior” to the plat description. It argues that both descriptions are of the same land because they are both based on the same quarter corner of section 23. This is correct if the east monument determines the quarter corner because the metes and bounds description begins at that point, but incorrect if, as the Zaputills contend, the properties should be located based on the west monument. Thus, the essential issue is whether the east monument or the west monument should be used to mark the quarter corner’s location.<sup>5</sup>

While quarter corners are theoretically located halfway between and in line with section corners, the “true corner” is where the original government surveyor actually located it with an original monument. Milwaukee Land Co. v. Weyerhaeuser Timber Co., 106 Wn. 604, 607, 180 P. 879 (1919); Hale v. Ball, 70 Wn. 435, 439, 126 P. 942 (1912). As explained in one early case, any “error” in the corner’s location is not subject to court correction.

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<sup>5</sup> At oral argument the Zaputills’ counsel argued, “This isn’t a question of the correct location of the quarter corner. This is a question of how the plat is measured.” But the plat is laid out in relation to the quarter corner, so the correct location of the quarter corner (as determined by the quarter corner monument) actually is the dispositive issue.

[A] court or a court commissioner cannot correct the United States government surveys, or establish government corners at points other than those fixed by the government surveyors; [and] in any attempt to reestablish an original survey the purpose should be to follow the footsteps of the government surveyor as nearly as possible, and . . . when there is any variance between field notes and monuments, as set up by the United States government surveyors, the monuments must prevail. It was undoubtedly the duty of the commissioner to ascertain, if possible, where the original government monuments had been actually located and established, rather than where he might think they ought to be located or established.

Strunz v. Hood, 44 Wn. 99, 105–06, 87 P. 45 (1906). A subsequent surveyor is similarly limited. “The cardinal principle guiding a surveyor who is running the lines of a previous survey is to follow in the footsteps of the previous surveyor. . . . A survey once having been made, even though erroneous in some details, vests property rights which are not to be lightly upset.” Colonial Inv. Co. v. Mackenzie, 8 Wn. App. 264, 267, 505 P.2d 834 (1973). The purpose of a resurvey is to “rediscover where the original surveyors placed the boundaries rather than determine where new and modern survey would place them.” DD & L, Inc. v. Burgess, 51 Wn. App. 329, 336, 753 P.2d 561 (1988); Walter G. Robillard & Lane J. Bouman, *Clark on Surveying & Boundaries* § 17.01 (7th ed. 1997).

But it is not always possible to locate the original monument marking a particular section or quarter corner. “A ‘lost’ monument is one whose location is not known and cannot be reconstructed by evidence; and an ‘obliterated’ monument is one whose location can be reconstructed by evidence, though there is no physical trace of the monument.” 18 William B. Stoebuck & John W. Weaver, *Washington Practice: Real Estate: Transactions* § 13.4, at 95 (2d ed. 2004). If a corner monument is obliterated,



it must be reestablished where the evidence shows the original surveyor actually located it, regardless of where it should have been located. Martin v. Neeley, 55 Wn.2d 219, 222–23, 347 P.2d 529 (1959). If a monument is lost, it is reestablished “under the rule prevailing in the land department of the United States; that is, at the point equidistant from the section corners.” Neeley, 55 Wn.2d at 223 (quoting Hale v. Ball, 70 Wash. 435, 441, 126 P. 942 (1912)).

Here, 51st Avenue presented evidence that the original monument was obliterated and then reestablished in the same location in 1964. It produced field notes from 1924 indicating that the original monument was buried under eight feet of fill and that the 1924 surveyor set a concrete hub at “Approx. 1/4 S. Cor 22/23.” It presented evidence that in subsequent years, some surveyors mistakenly took this hub to be the original monument and used it to mark the quarter corner. And it presented evidence that the 1964 survey crew became aware of this mistake and reestablished the quarter corner monument where the original United States government survey had placed it, 10 feet to the east. The 1964 surveyors’ notes indicate that they analyzed prior surveyors’ field notes to determine the correct location. This location also matched the distances recorded in the original plat maps.

The Zaputills do not address this evidence. Their principal argument is focused on the fact that certain streets such as 52nd Avenue South were laid out using the west monument as the quarter corner. They insist it is unfair for the east monument to determine their property’s boundaries when 52nd Avenue South was laid out based on the west monument. But the mistaken past use of the west monument as the quarter corner does not mean the east monument

is not the true quarter corner. As explained in the leading treatise, the use of the wrong monument as the quarter corner may cause problems for adjacent property owners (which may be dealt with by other boundary adjustment doctrines such as adverse possession or mutual recognition and acquiescence), but this does not prevent correction of the monument's placement.

County or local surveyors are frequently called upon to restore corners which have been moved either by accident or purposely. In such case the surveyor will proceed in the same manner as for the restoration of lost corners. This may not be very satisfactory to the owners of the property adjacent to the moved corner but it is the only thing to do.

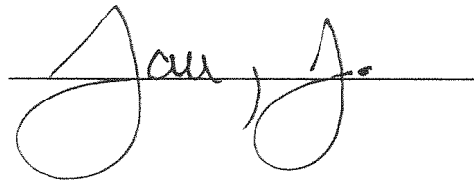
Robillard, et al., supra, §17.18 at 538–39.

The Zaputils also assert that the original plats were “obviously” made with a different reference point than the east monument and that the west monument was “the only monument in existence when the plat was created.” Appellant’s Opening Br. at 11 and Reply Br. at 2. But they presented no evidence that would support these factual assertions. Rather, the evidence in the record supports 51st Avenue’s contentions that the original plats were made in reference to the east monument’s location and that the west monument was not in existence when the plat was created, but was set decades later. While some surveyors (mainly prior to 1964) apparently concluded that the west monument was the original monument marking the corner quarter, 51st Avenue’s evidence—based on a comprehensive analysis of field notes and other historical data—demonstrated that those surveyors were mistaken. While this court construes facts and reasonable inferences in the light most favorable to the nonmoving party, the evidence here supports only one conclusion. The Zaputils fail to show there is a genuine factual dispute about the

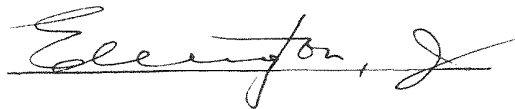
location of the quarter corner. Consequently, the boundary between

the Zaputils' property and 51st Avenue's property is not uncertain and summary judgment was properly granted.

We affirm.

A handwritten signature in cursive script, appearing to read "Jan, J.", written over a horizontal line.

WE CONCUR:

A handwritten signature in cursive script, appearing to read "Elenyon, J.", written over a horizontal line.A handwritten signature in cursive script, appearing to read "Dwyer, A.C.J.", written over a horizontal line.